

STATE OF CONNECTICUT

Docket No.: FST-CV-10-6005348-S	:	
	:	SUPERIOR COURT
BROOKE HUNDLEY,	:	
Plaintiff,	:	JUDICIAL DISTRICT OF STAMFORD
	:	
V.	:	
	:	
ESPN PRODUCTIONS, INC.	:	November 20, 2012
Defendant,	:	
	:	

**PLAINTIFF'S REVISED OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

I. Introduction

“Hopefully...” This is the language used by Defendant’s vice president of information technology while he and his team were looking for information to “support a decision to terminate Ms. Hundley’s employment.” Ex. W; Richardson, Ex. D, 170:14-171:9. This language is evidence of Defendant’s malicious state of mind – its desire to come up with a reason to fire Hundley after the New York Post published an article that embarrassed Defendant.

ESPN fired Hundley only a few days later, at a time when Defendant was attempting to clean up the “mess.” Ex. CC. In fact, ESPN only sought to “reopen” its investigation after the details of her complaint became public. Its investigation was a sham which did not reveal any evidence of misconduct. Despite this lack of evidence, Douglas Adkins, Defendant’s Vice President of Human Resources, accused Hundley of six specific acts of misconduct. He published these accusations to his boss, Paul Richardson, who authorized Hundley’s termination. All of the elements of defamation and retaliation are met.

II. Background Facts

a. Brooke Hundley and Steve Phillips meet

Hundley began working for ESPN as a production assistant on September 29, 2008. Affidavit of Illegal Discrimination, Ex. P, ¶ 2. She was paid \$10.96 per hour. *Id.* Hundley was 21 years old at the time. *Id.*

In or around 2005, ESPN hired Steve Phillips, the former General Manager for the New York Mets as baseball analyst and announcer. *Id.*, ¶ 3. On or around July 13, 2009, Phillips introduced himself to Hundley at the Major League Baseball All-Star weekend in St. Louis, Missouri. Hundley, Ex. A, 37:20-38:8. Phillips flirted with Hundley, making her uncomfortable,

and calling her “the Denver chick” throughout the day. Hundley, Ex. A, 54:14-61:10. It was inappropriate for Phillips to have made an advance or overture to someone like Hundley in such a junior role. Richardson, Ex. D, 108:4-7.

Hundley next encountered Phillips at around 10:00 PM in the lobby of the hotel in St. Louis in which all of the ESPN employees were staying for the All-Star game. Hundley, Ex. A, 67:20- 69:24. Phillips bought Hundley an inappropriately strong drink that tasted like “pure vodka.” *Id.*, 69:25-73:18. Hundley went to the ladies’ room and Phillips surprised her outside of the ladies’ room where he was waiting for her. *Id.*, 73:24-75:5. Phillips made an inappropriate physical advance towards her, touching her chest and kissing her. *Id.*, 75:19-83:12.

Hundley immediately reported this conduct to her production coordinator, Joya Caskey, who responded by saying “get used to it,” and that if she had a dollar for every time she was sexually harassed at ESPN she would be a millionaire and she didn’t want to hear any more.¹ Hundley, Ex. A, 85:13-19; Adkins, Ex. B, 83:9-10. After Caskey “dismissed” Hundley’s claims, she went crying back to her room. Hundley, Ex. A, 86:10-19. Hundley then decided to take it upon herself to get an apology from Phillips. *Id.*, 86:10-87:10. Hundley then went to meet Phillips at his room to accept his apology. *Id.*, 92:14-93:7. As soon as she got there, Phillips “was basically on top of [her] in his hotel room.” *Id.*, 93:8-94:15. Hundley pulled away, he grabbed her hand, pinned her against the door, and said, “you are staying here tonight.” *Id.* He took his shirt off, grabbed her hand, and threw her against the bed. *Id.*, 94:20-96:15. She was crying during this encounter. *Id.*

She did not report this incident to any member of management because she was ashamed. She wanted to “just forget...[that] any of it happened to me.” Hundley, Ex. A, 402:13-18.

¹ Adkins admits that Caskey said something along the lines of “that’s the way it is in television...” Adkins, 82:11-16.

b. Steve Phillips pursues Brooke Hundley

Phillips began sending text messages to Hundley the next day. *Id.*, 102:20-103:8. This texting started off innocently. *Id.*, 103:10-104:21. Later, Phillips convinced Hundley to meet him, got her in his car, locked the doors, and forced himself upon her again. *Id.*, 108:3-115:8.

After this meeting, Phillips began sending Hundley much more graphic text messages, indicating that he wanted to “go to the next level.” *Id.*, 121:16-122:3. Phillips convinced Hundley to meet him again in the parking lot of a Target store and demanded oral sex. *Id.*, 129:17-131:8.

c. Joya Caskey tells Hundley to keep quiet

A few weeks later, Joya spoke to Hundley and her friend, Erin Elser, at a going away party. Joya told Hundley that she (Joya) should have done something when Hundley told Caskey what happened, but that Hundley should keep her mouth shut about what happened and not talk to other people about it. Hundley, Ex. A, 207:16-208:13.

d. Brooke Hundley tries to get rid of Steve Phillips

Hundley had mixed feelings about Phillips. Hundley, Ex. A, 115:11-116:22. While she was flattered by his affection, she did not like his aggressive nature or the fact that he was cheating on his wife. *Id.* After she learned that he had been talking publicly about her as though she was pursuing him, she became angry and threatened to tell Phillips’s wife, Marni. *Id.*, 137:7-13. Because Hundley could not find a telephone number for Marni Phillips, she decided to write her a letter. *Id.*, 137:17-139:9.

Before writing a letter to Marni, she made attempts to obtain her phone number. Hundley sent a Facebook “Friend Request” to the Phillips’ son Ryan “because [she] wanted him to friend [her] so [she] could see if he had a phone number.” Hundley, Ex. A, 328:18-329:19. She first

made this request under her own name and then under an alias. *Id.*, 350:17-23; 327:6-333:8.

When Hundley noted that Ryan did not have a phone number listed she did not pursue any further contact. *Id.*, 353:3-12, 354:2-21. Hundley did not use an ESPN computer or any other equipment to make this request, but rather used her home computer. *Id.*, 327:6-9.

In an attempt to force a confrontation between Phillips and his wife, on August 5, 2009, Hundley arranged a meeting with Phillips. *Id.*, 312:9-315:17. Phillips had sent Hundley a text message stating, "Do me a favor. No makeup and no perfume. I can't go home with any sign of u [sic] on me. Deal?" Exhibit E, p. 6; Hundley, Ex. A, 315:10-17. She then attempted to contact Marni by phone to convince her to appear at this meeting so that Marni would catch Hundley and Phillips *in flagrante delicto*. Hundley's objective in making this call was "to stop all this." Hundley, Ex. A, 316:20-317:2; 349:1-14. She didn't want to make the call herself, so she hired another woman and asked her to make the call. *Id.*, 194:6-11, 196:8-19. Hundley chose to hire a woman to make this call instead of calling herself because she was afraid of Steve Phillips. *Id.*, 387:14-22 ("as soon as I put my name in it, God only knows what is going to happen to me. I am dealing with a rapist here. It's not like- this guy's pretty much willing to do whatever it takes to shut me up and has said so."), 194:6-11, 196:8-19.

The phone number that Hundley and the woman called to reach Marni was connected to a voice mail message with Steve Phillips's voice, and they therefore did not leave a message on this line. *Id.*, 313:4-15. Hundley went home and received a text message stating, "I just got a really bad call from my wife that some woman called her about me screwing someone in Bristol. I am f[]ed." Exhibit E, p. 7. That night's planned meeting in the Target parking lot never occurred. Hundley, Ex. A, 317:7-15. The call that Marni received that night was not from Hundley, since

the call that Hundley did make to Marni came "way later." Hundley, Ex. A, 316:13-19.

Sometime later Hundley called a phone number that she thought might be Marni's number and left a message that she needed to speak with her. She left her phone number, said that she worked with Steve, that it was important, and that Phillips was having an affair. Hundley, Ex. A, 336:6-338:8. This was her "last ditch attempt" to try to reach Marni. *Id.*

My whole point in it was nothing else works. The guy's already told me that no matter what I tell his wife, she is not going to leave him. He's cheated on her multiple times. I'm willing to pretty much say anything to get her to pick up the phone and have a conversation with me. And at that point, I thought the only thing that was going to work was convincing her that Steve and I had some great affair. Which is what I put in the letter.

Hundley, Ex. A, 348:2-24.

On or about August 19, 2009, Plaintiff delivered the above-referenced letter to Marni Phillips at the Phillips's home in Wilton. *Id.*, 324:10-16. This letter disclosed that Phillips and Hundley had encounters and that she, Marni, should know the truth. Exhibit F.

She drove to Wilton, Connecticut, to Phillips's house. She drove up the driveway and left the letter in the door. Hundley, Ex. A, 151:15-17. Almost immediately, she had second thoughts. *Id.*, 151:18-22. She found a young woman in the parking lot of the local YMCA and offered her \$10 to go get the letter. *Id.*, 224:7-227:3. The woman refused, so Hundley went to retrieve it herself. *Id.*, 151:18-152:1; 230:2-6. She drove back to the house, parked her car at the bottom of the driveway and got out of her car. *Id.*, 152:2-19; 230:7-14. Almost immediately, she saw Phillips's SUV coming up the driveway towards her. *Id.*; 232:2-11. She got back in her car and tried to get away, but the SUV blocked her and revved its engine. *Id.*, 233:20-234:24. She then drove around the SUV and in so doing, knocked a few stones off of a pillar in the driveway. *Id.*,

e. Phillips falsely accuses Hundley of stalking him.

Later that day, August 20, 2009, Steve Phillips met with executives at ESPN. Ex. G. Present at this meeting were Tim Scanlan, Jay Levy and Jed Drake and Doug Adkins. Adkins, Ex. B, 49:5-23. Mr. Adkins took notes. *Id.*, 49:17-50:5; Ex. G. Phillips reported to these men that he and his family were being “stalked” by Hundley. Ex. G. He also claimed and that he had been “trying to end” his relationship with Hundley and provide her with a “soft landing.” *Id.*; Adkins, Ex. B, 57:8-19; 100:2-13; 101:3-5. Phillips told Adkins that Hundley was “not happy.” *Id.* He also told Adkins that his son had told him that he received “instant messages” from Hundley under a fake name. Adkins, Ex. B, 104:20-25. He also told Adkins that Hundley had attended his son’s football practice and asked him personal questions. Ex. G. Phillips did not tell Adkins everything that was relevant to his claim against Hundley. Adkins, Ex. B, 94:13-24.

f. ESPN interviews Hundley regarding Steve Phillips’s accusations

On August 20, 2009, ESPN met with Hundley and confronted her with Phillips’s allegations. Hricisko, Ex. C, 31:17-32:14. ESPN’s representatives at this meeting included Donna Hricisko and Doug Adkins. Hundley, Ex. A, 178:3-15. Donna Hricisko, from ESPN’s Human Resources Department, took notes during this meeting but did so sporadically and did not write down everything that was said. Hundley, Ex. A, 197:3-11.

Adkins asked Hundley to explain her first meeting with Phillips. Hundley “walked them through” her meeting Phillips at the All-Star week in St. Louis. *Id.*, 186:7- 187:14. She described for them how he made her feel uncomfortable, and bought her an inappropriately strong alcoholic drink. *Id.*, 187:15-188:21. She further explained how Phillips waited for her outside a bathroom,

asked her inappropriate questions, touched her chest, and asked her to go to his hotel room. *Id.*, 189:1-15.

Hundley then told Adkins that she got away from Phillips and “immediately went to Joya.” *Id.*, 190:3-13. Joya Caskey was Brooke Hundley’s Production Coordinator and was the only “senior level person” that she knew of that she could go to with this complaint. *Id.*, 192:2-7. Hundley told Joya that he had asked her to his hotel room. Joya said, “Get used to it kid. If I had a dollar for every time I was sexually harassed at ESPN I would be a millionaire.” *Id.* Hundley then related to Adkins that she became upset and went to sit by herself at this point. *Id.*

Hundley next told Adkins that she called Phillips to have a conversation with him about what just happened. *Id.*, 192:11-23. Phillips was “extremely apologetic” during this call. *Id.* Hundley then told Adkins that she went to Phillips’s room to hear his apology and that when she got there he insisted that she enter the room. *Id.*, 195:3-14. Hundley then indicated that she did not want to go into more details about what happened in St. Louis. Adkins asked her whether she was sure that she didn’t want to discuss anything more, and she responded that “there was a lot of [her] saying no just trying to get my apology and get out of there.” *Id.*, 195:15-196:3. Adkins made Hundley feel “really uncomfortable” talking about these matters. *Id.*, 196:10-12. He did not take notes but stared at her, rolled his eyes and talked to her in a demeaning manner. *Id.*, 196:13-197:2.

Adkins then told Hundley that Phillips had reported that someone was “repeatedly calling” his house. *Id.*, 199:11-201:13. He asked if Hundley had spoken with Phillips’s wife or kids or member of his family. *Id.*, 327:19-24. Hundley stated that she had not. *Id.* Adkins asked if Hundley was “that person who was repeatedly calling the house.” Hundley understood Adkins to

be “asking about someone who was harassingly [sic] and calling his wife.” 307:9-11. Therefore, Hundley answered no. She had made one phone call to a number that may or may not have been Marni’s but had not repeatedly called Marni Phillips in an attempt to harass her. Adkins “didn’t go into any detail or ask [Hundley] any follow-up questions.” *Id.*² At that time, Phillips’s wife Marni reported to the police that Steve Phillips was having “numerous affairs.” Statement of Marni Phillips, Ex. H.

Adkins asked Hundley if she had talked to anyone else regarding what had happened at the hotel. Hundley, Ex. A, 207:16-208:13. She told them that she had spoken with her good friend, Erin Elser. *Id.* She told them that while she and Erin were talking at Erin’s going away party, Joya Caskey approached them and said, “You know, you really shouldn’t be talking about that here. You know these kind of situations tend to look bad for the women involved, and you’re both pretty young women, and I’ve talked to Erin about stuff like this too. And, you know, you really just kind of have to handle it on your own.” *Id.*

Hundley described graphic sexual texts from Steve and showed them one of them and offered to show them more sexually explicit texts. Hricisko said, “No, that’s OK.” Hundley, Ex. A, 208:17-209:6.

Adkins next asked how long this situation had been going on and whether she and Steve had had anymore correspondence since the hotel. *Id.*, 208:17-209:6; 209:17-210:16. Hundley then told Adkins about text messages and phone records that showed that Phillips was pursuing her; rather than Hundley pursuing him. Hundley, Ex. A, 213:2-15; Hricisko, Ex. C, 42:7-17. She told Hricisko and Adkins that they had exchanged telephone calls. *Id.*, 43:7-9. She gave Hricisko her telephone number so she could corroborate this claim. *Id.*, 43:20-21. ESPN did not ask

² Hricisko’s notes on this topic include only the following: “Did you talk to wife or kids? No.” Exhibit I.

Hundley for her telephone records or to produce her cell phone so that they could see the most sexually explicit text messages. *Id.*, 43:22-23, 44:4-10, 44:20-25. She then described that she felt that she was “dealing with stuff on [her] own.” *Id.*, 213:24-214-3.

Hundley also answered questions about the letter that she had dropped off at the Phillips home. Hundley, Ex. A, 214:4-13. She told Adkins that she left a letter “trying to get him to leave me alone” for Phillips’s wife Marni. *Id.*, 214:18-215:10. She told them that she wrote a letter “full of crap to make his home life – life at home bad.” Her letter did not say that she was having an “affair” with Phillips. *Id.*, 249:1-10, 251:20 – 252:3.

She stated that after she dropped this letter off at the Phillips home, she wanted to retrieve it, asked a high school girl if she would retrieve the letter for her for \$10, that the girl refused and that Hundley went to retrieve the letter herself. *Id.*, 215:11-216:21; Ex. I. Hundley then described to Adkins how she went to retrieve the letter but stopped when “some truck came up the hill.” *Id.*, 216:16-217:16; 246:19 – 247:22. She told Adkins and Hricisko that it was she in the car that went to retrieve the letter. *Id.*, 252:18-21.

g. Hundley files a complaint of sexual assault against Phillips.

The next day, August 21, 2009, Hundley provided a written statement to Hricisko which indicated clearly that Phillips’s behavior towards her in St. Louis on July 13, 2009 was unwelcomed including a claim that he forced himself onto her. Hricisko, Ex. C, 53:10-54:13; Ex. J, Hundley, Ex. A, 279:16-282:24. This statement was prepared on August 20, 2009. Hundley, Ex. A, 283:6-23. The “point of the letter...was to clarify a subject, which [she] stopped talking about in the meeting, because of Doug’s behavior and [Hundley’s] uncomfortableness [sic] around him.” *Id.*, 322:5-15. This statement included a specific claim that Phillips had sexually assaulted

her in the hotel room in St. Louis. Ex. J. In that regard, the statement said:

When I got there, he immediately came after me physically. I told him to stop several times, reminded him that was not why I was there and if he didn't want to talk I should go. I attempted to leave, but he blocked the door, and then proceeded to push me up against it and put his hands up inside me. I asked him to stop but he continued to force himself onto me for awhile, stating it was ok I didn't have to worry he had a vasectomy so I wouldn't get pregnant, until I begged him to stop cause I was in pain. Then he said he just wanted to rest his eyes for a minute and as soon as I saw he was asleep I ran out of there crying around 4 a.m.

Ex. J.

Hricisko brought this complaint to Adkins's attention. Adkins, Ex. B, 74:25-75:6. There was no written procedure at ESPN for investigating complaints of sexual assault or sexual harassment. Hricisko, Ex. C, 55:23-56:9.

Adkins confronted Phillips with these accusations on August 26, 2009 at 3:30 PM. Generally he denied the allegations. Ex. BB.

h. Phillips and Hundley settle their differences – ESPN closes its “investigation.”

Both Hundley and Phillips hired attorneys with regard to their claims against each other. Hundley, Ex. A, 290:3-291:20. On or around September 15, 2009, Phillips and Hundley entered into a Settlement Agreement and General Release to resolve any differences which may have existed between them.

That settlement included a retraction by Hundley of all prior statements and allegations against Phillips. Adkins, Ex. B, 85:4-86:17. She signed this retraction because she was under the impression that a retraction was necessary to get her job back, have Phillips leave her alone, “to go back to [her] job and [her] life” and so that ESPN “would not need to worry about investigating anything.” Hundley, Ex. A, 265:3-268:2, 295:12-21. She did not intend for it to be truthful. *Id.*,

267:8-19. Her attorney told her, “this is the only way to make this go away.” *Id.*, 267:18-19.

On or around Wednesday, September 16, 2009 Adkins sent an email to Hundley which stated “With your retraction, we conclude our review of this matter.” Ex. L. Plaintiff was allowed to resume her duties because of her retraction and so long as she and Mr. Phillips avoided contact with each other, outside of what was reasonably required to do their respective jobs, “including verbal and written communications such as notes, texts and emails.” *Id.*; Adkins, Ex. B, 60:13-61:7.

Steve Phillips also retracted his statements against Hundley. ESPN suspended Phillips for five days without pay for “reckless behavior and poor judgment.” Adkins, Ex. B, 71:13-19, 73:8-21; Hricisko, Ex. C, 86:10-13.

ESPN did not punish Plaintiff in any way for her involvement in the events and simply allowed her to work. ESPN had no plans or intentions at that time to punish Plaintiff for anything she had done to date. There was no reason to punish plaintiff as of that date. Hricisko, Ex. C, 71:13-14.

i. Joya Caskey gets caught in a lie and is not punished.

Donna Hricisko interviewed Caskey via telephone on August 25, 2009 and took notes. Ex. N. Hricisko confirmed with Caskey that she spoke to Hundley about Phillips a few days after the July 13, 2009 incident at a going away party. Her notes say, “Couple days later at a going away party – Joya I am sorry I should have handled it differently. I should have served it up to Matt Sandulli. Do you want me to do that – **Brooke said no.**” (Ex. N) (emphasis added).

On October 2, 2009, Hricisko again had a teleconference with Caskey. Hricisko took notes during this teleconference. Ex. O. She wrote: “Going away party – told Brooke she should have

told Matt and told her she would if she wanted her to. **She did not answer her.**" (emphasis added). *Id.* This account was confirmed in an email to Caskey on October 6, 2009. (Ex. Q.)

These notes reflect two different responses by Caskey to the question of how Hundley responded to her at the going away party. Richardson, Ex. D, 102:21-24. First, Caskey said that Hundley said that she did not want her complaint escalated. Ex. N. Later, when questioned again, she admitted that Hundley did not say "no" but instead did not answer her. Ex. O. Caskey was never investigated or punished for this inconsistent statement. She was merely "counseled." Richardson, Ex. D, 96:7-110:22.

j. The New York Post article

On or around Wednesday, October 21, 2009, the New York Post published an article about Plaintiff and Mr. Phillips which provided some of the detail of the events which led to ESPN's investigation as described above. Ex. R.

The article, entitled "Steve Phillips in foul affair with production assistant," characterized Hundley as a "dumped mistress" who had a "'Fatal Attraction' freakout." This article was based largely on statements given by Phillips to the Wilton, Connecticut police. Ex. S.

The internet article included links to the police report and statements given by Phillips, his wife and his son. Ex. R, S, H, T. One of the investigating officers by the name of Rangel informed Mrs. Phillips that "nothing criminal had occurred at this time,..." Ex. U.

After this article was published, Adkins reopened his investigation of Brooke Hundley.

k. ESPN re-opens its "investigation" of Hundley.

Adkins asked Hricisko via email to print all of the links in the story on October 21, 2009 at 6:12 p.m. Ex. V. The next day, Hundley was put out on a leave of absence pending the new

investigation. This decision was made by Richardson relying on information supplied to him by Adkins. Richardson, Ex. D, 146:2-12. She was removed in part because they intended to do some forensic work on the IT systems. *Id.*, 146:13-18. Adkins also gave instructions to have her access to the ESPN campus and computer systems revoked. *Id.*, 148:7-14.

Adkins's investigation this time lasted only two days; i.e., October 22, 2009 and October 23, 2009. Richardson, Ex. D, 149:6-151:11. While it is Richardson's general policy to provide an employee with an opportunity to respond to allegations when the evidence is "inconclusive," no such opportunity was provided to Hundley in this case. *Id.* Richardson did not personally direct Hricisko to talk to Hundley and ask for her version of the events that were under investigation. *Id.*, 159:1-4.

Richardson did not conduct his own investigation into these events and did not ask anyone other than Adkins and Hricisko to do so. *Id.*, 36:16-37:1. Richardson was relying on Adkins and Hricisko to conduct an investigation, report back their findings, make a recommendation and keep him advised. *Id.*, 37:2-6.

Adkins enlisted the aid of ESPN's Vice President of IT, Dan Robertson, to find information about Hundley. He had not been asked to participate in the original investigation in August and September. Richardson, Ex. D, 117:1-9. Robertson first reported to Adkins on Thursday, October 22, 2009 at 5:27 PM that he did not see any evidence that Hundley had used the "riotgrrr4life" account as Ryan Phillips had reported. Ex. Z. He also wrote that Hundley's access logs did not coincide with the time Ryan Phillips stated he had received a "chat" from Hundley. *Id.*

Adkins sent an email to Robertson on Friday, October 23, 2009 at 3:51 p.m. stating that he

was “meeting with Brooke Hundley on Monday at 10 am. Was wondering if your team was able to find any additional information relating to her Facebook activity. When you have a chance, please let me know.” Ex. W. Robertson responded:

Nothing eyebrow raising beyond what we’ve discussed already. We may find some more over the next day. We can send you what we have to date, or if its ok, send you a report by Sunday that would **hopefully** have more dots connected.”

Id. (emphasis added).

Adkins obtained a final report from Robertson on Sunday October 25, 2009, at approximately 7:28 PM. In that email, Robertson reported that their systems could only store about a “month’s worth of data, so we’ve missed most of the transactions that occurred in August (if they went through our systems at all).” Ex. AA. Later, he writes, **“Sorry, no evidence of the ‘he said she said’ in black and white.”** *Id.* (emphasis added).

Adkins then called Paul Richardson at his home, spoke to him, and in reliance on what Adkins said, Richardson approved the termination of plaintiff. *Id.*, 171:4-173:7; Ex. AA. Despite this lack of evidence, Adkins told Richardson that he believed they had grounds to separate Hundley for misconduct and then explained the basis for that opinion. Adkins, Ex. B, 122:17-21.

Adkins told Richardson that Plaintiff committed “misconduct” in six specific ways:

1. Hundley had been untruthful with Adkins in their August 20, 2009 meeting by informing him that she hired a high school student to take her car to retrieve the letter.
2. Hundley had been untruthful on August 20, 2009 by denying that she had talked to Mrs. Phillips or her children.
3. Hundley had been untruthful on August 20, 2009 by denying that she had contacted Mrs. Phillips or her children.
4. Hundley had been untruthful on August 20, 2009 by stating that some woman, she didn’t know who, had called Mrs. Phillips and informed her that her husband was having an affair.
5. Hundley misused ESPN’s computer system to facilitate a communication with Ryan Phillips.

6. Hundley used ESPN's computers to prepare a script that a woman she hired used to call Mrs. Phillips.

Adkins, Ex. B, 33:18-36:18, Richardson, Ex. D, 177:2-4, 178:2-4.

Based on what Adkins told him, Richardson believed that he "had enough information to **substantiate** [ESPN's] decision to terminate Ms. Hundley's employment." *Id.*, 151:6-7 (emphasis added). He believed he had enough evidence to give him "full confidence that [he was] making the right decision in terminating her employment." *Id.*, 151:9-11. Richardson relied on Adkins to tell him generally what Robertson had found by reviewing plaintiff's computer. Richardson, Ex. D, 169:2-6. Based on Adkins's allegations against plaintiff, Richardson gave the approval to fire her. *Id.*, 181:5-8; Adkins, Ex. B, 34:5-36:2.

I. ESPN fires Hundley.

On October 26, 2009, Doug Adkins met with Hundley and told her that she was being terminated effective immediately for "misconduct including but not limited to failure to fully cooperate with the investigation. This decision is final and not open to debate." Affidavit of Illegal Discrimination, Ex. P, ¶ 29; Adkins, Ex. B, 29:16-22.³ Prior to terminating Hundley for alleged misconduct, Adkins did not confront her with the information he had and ask her for her explanation. Adkins, Ex. B, 46:5-47:10.

Plaintiff asked him if she could be provided with the details of the reasons for her discharge. Aff. of Illegal Discrimination, Ex. P., ¶ 30. Adkins refused to provide any particulars and stated, "we'll see." *Id.* Hundley was escorted from the building by security and not permitted

³ While Adkins admitted making this statement at his deposition on September 3, 2010, he falsely and knowingly denied it under oath before the Connecticut Commission on Human Rights and Opportunities. Ex. X. The fact of Adkins's perjury was brought to the attention of his boss Paul Richardson during his deposition. Richardson, Ex. D, 55:11-71:1. Despite this act of perjury, Adkins was not terminated after Richardson's deposition and still works for ESPN. Affidavit of D. Adkins in Support of Defendant's Memorandum of Law in Support of its Motion for Summary Judgment, ¶ 1.

even to go to her desk to retrieve personal items. Hricisko, Ex. C, 28:9-13.

Hundley was later sent a letter stating “As a follow up to our meeting on Monday, October 26, 2009 you were separated from employment due to misconduct.” Ex. M. A copy of this letter was placed in her personnel file. *Id.*

m. ESPN publicly defames Hundley to the Associated Press.

On November 12, 2009, ESPN, through its communications department, Mr. Chris LaPlaca, stated to the Associated Press that its “investigation found Hundley’s characterization of the events [to be] inconsistent.” Adkins, Ex. B, 93:10-22.

III. Legal Principles

A. Summary Judgment

“Summary judgment shall be rendered if the pleadings, affidavits and any other proof submitted show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Conn. Practice Book § 17-49. “In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.” *Barry v. Quality Steel Products, Inc.*, 263 Conn. 424, 450 (2003) (citations omitted).

B. Defamation

In to establish a prima facie case of defamation in employment, a plaintiff must show that

- (1) the defendant published a defamatory statement;
- (2) the defamatory statement identified the plaintiff to a third person;
- (3) the defamatory statement was published to a third person; and
- (4) the plaintiff’s reputation suffered injury as a result of the statement.

Gambardella v. Apple Health Care, Inc., 291 Conn. 620, 627-28 (2009).

1. Defamation in Employment

False statements that “[charge] improper conduct or lack of skill or integrity in one’s profession or business and [are] of such a nature that [they are] calculated to cause injury to one in his profession or business” are *per se* defamatory and do not require a showing of special damages. *Proto v. Bridgeport Herald Corp.*, 136 Conn. 557, 565-66 (1950); *see also Urban v. Hartford Gas Co.*, 139 Conn. 301, 308 (1952) (when a plaintiff shows defamation *per se*, he need not prove damages). The Connecticut Supreme Court has further held that publishing false and defamatory information to an employee’s personnel file or discussing this information within the corporate setting constitutes “publication” for the purposes of alleging a case of defamation. *Torosyan v. Boeringher Ingelheim Pharmaceuticals, Inc.*, 234 Conn. 1, 27-28 (1995).

The leading case in Connecticut is *Gaudio v. Griffin Heath Servs. Corp.*, 249 Conn. 523, 545 (1999). In that case, the Supreme Court upheld a jury verdict against a hospital that had fired an employee based on an internal investigation that a jury later concluded had been recklessly done. Gaudio was accused of violating the restraint policy of the hospital and proved that this accusation was false. He also offered evidence that the accusation was made to avoid legal liability, since the patient had threatened to sue. The court held that under those facts the jury could reasonably have inferred that the “defendant’s agents published a false statement in order to effectuate the plaintiff’s discharge, even though they doubted the statement’s veracity.” *Id.* at 545-46.

While an element of these claims is malice, that element can be satisfied either by evidence of an impermissible motive (like avoiding legal liability) or evidence of recklessness (finding of actual malice permissible where there is sufficient evidence to support an inference that the

employer “in fact entertained serious doubts as to the truth of his publication.”) *Id*; *Gambardella v. Apple Health Care, Inc.*, 291 Conn. 620, 630-35 (2009) (either form of malice serves to defeat a qualified privilege in the employment context). *See, e.g., Gaudio, supra*, 249 Conn. at 546-47 (FN 25) (“the jury reasonably could have concluded that the malice of the defendant inhered in the fact that it was so concerned about avoiding legal liability that it terminated an innocent employee on the basis of nothing more than a cursory and unreliable memo”); *Gambardella, supra*, 291 Conn. at 639-40 (“[t]he groundless nature of the statement accusing the plaintiff of theft sufficiently established that the defendants held a high degree of awareness of probable falsity of the statements...regardless of whether they denied entertaining serious doubts as to their truth. ...Moreover, Sweeney continued to profess this belief in the face of its demonstrated falsity. Adhering to a demonstrably false and groundless belief and publishing that belief is, purely and simply, reckless disregard for the truth.”).

A plaintiff makes out a claim of defamation in employment when she shows that an agent of his employer publishes a statement that she has violated a company policy and that statement is either made recklessly or for an improper purpose.

C. Retaliation in Violation of the Connecticut Fair Employment Practices Act (“CFEPA”)

It is unlawful for an employer to “to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice.” Conn. Gen. Stat. § 46a-60(4).⁴ To establish a prima facie case of retaliation, a plaintiff must show four

⁴ The act is coextensive with Title VII of the federal Civil Rights Act of 1964, and Connecticut courts therefore look to federal case law for guidance in interpreting the provisions of the act. *State v. Commission on Human Rights & Opportunities*, 211 Conn. 464, 470, 559 A.2d 1120 (1989).

elements: (1) that he participated in a protected activity; (2) that the defendant knew of the protected activity; (3) an adverse employment action against him; and (4) a causal connection between the protected activity and the adverse employment action. *McMenemy v. Rochester*, 241 F.3d 279, 282-83 (2d Cir. 2001). A plaintiff's burden to make out her prima facie case is "*de minimis*." *Collins v. Conn. Job Corps*, 684 F. Supp. 2d 232, 254 (D. Conn. 2010). Defendant does not contest the first three elements of Plaintiff's claim but rather claims that she has not shown a causal connection between the protected activity and her termination.

IV. Discussion

A. Plaintiff's defamation counts are well supported by the record and line up squarely with the holding of *Gaudio v. Griffin Health Services Corporation*, 249 Conn. 523 (1999).

Hundley's evidence supports every element of her defamation claims. Defendant's Vice President of Human Resources accused Hundley of committing "misconduct" to his superior, Paul Richardson. Adkins's accusations are generally in the nature of making misrepresentations during an investigation, as described in detail in the Facts section above. He made these accusations after having conducted a sham investigation, which was designed to "effectuate" Hundley's discharge even though they "entertained serious doubts as to the truth of his publication." *Gaudio v. Griffin Health Services Corp.*, 249 Conn. 523, 546 (1999). Richardson relied exclusively on Adkins's investigation and report and authorized Hundley's discharge after ESPN was publicly embarrassed by recent media coverage. All of Adkins's accusations are false. Plaintiff did not make misrepresentations during the investigation and instead answered every question truthfully and honestly. Hundley was thus fired for an "improper or unjustifiable motive." *Id.* The record contains sufficient evidence to support each and every element of these claims.

i. **ESPN's accusations that Hundley committed "misconduct" are false.**

1. **Adkins's claim that Hundley lied about who retrieved the letter is false.**

Hundley testified that she told Adkins that she asked the high school girl to go retrieve the letter, that the girl refused, and that Hundley herself went to get it. Hundley, Ex. A, 214:4-215:10. Further, Defendant's evidence that Hundley lied about this fact on August 20, 2009 is weak.

During that meeting, Hricisko wrote the following entry:

"High School girl: I will give you \$10.00 to go get the letter for me – School girl came back and steve came and tried to ram her car."

Ex. I. His allegation that Hundley lied is supported only by the possibility that Hricisko's use of the pronoun "her" – as in "her car"- referred to the high school girl. Def.'s Mem. at 15. This evidence does not support ESPN's accusation that Hundley lied on this topic. Hundley testified that she was clear with Adkins and Hricisko that she said that she (Hundley) was the one who went to retrieve the letter and that she believed that "her" meant Hundley.⁵ Hundley, Ex. A, 246:3-247:22. It was reckless of Adkins to conclude from her August 20, 2009 notes that Hundley lied, especially since he never gave Hundley a chance to explain or even talk to the author of the notes, Donna Hricisko. Finally, the alleged lie – that the high school girl, not Hundley, was the person who went to retrieve the letter – is not a material lie or something that Adkins or Hricisko would care about. Hundley had already admitted writing the letter and delivering it. Defendant

⁵ Hricisko's use of pronouns in her notes has been sloppy. In her notes from one of her conversations with Joya Caskey, she used the used the pronouns "she" and "her" in a very confusing way. She wrote:

"Going away party – Told Brook she should have told Matt & told her she would if she wanted her to."

Ex. N, O. Her first use of "she" in this entry must be referring to herself, Joya Caskey, but it is far from clear. Her next use of "she" must mean Caskey and the last use must mean Hundley. So, Hricisko used the word "she" three times and referred to two different people all in the same sentence. This is evidence that Hricisko's notes are unreliable in this manner.

did not punish her for this conduct because it is not misconduct. This evidence is sufficient to support a jury's verdict that Adkins statement to Richardson on this topic was false.

2. Adkins's claim that Hundley lied about talking to Marni Phillips or Ryan Phillips is false.

The record supports Hundley's claim that she truthfully answered Adkins's question about whether she had spoken with Marni Phillips, and that Adkins's accusation of misconduct is false.

Hundley's testimony on this topic is clear. Adkins asked her on August 20, 2009 if she had spoken with Marni Phillips or her children. Even Donna Hricisko's notes bear this out. Hricisko wrote: *"Did you talk to wife or Kids? No."* Ex. I. Later, Hricisko typed up those notes. The result was the same: *"Doug Adkins asked Brooke if she had spoken to Steve's wife or children. Brooke stated she has not."* Ex. Y. Defendant has finally conceded this point. It writes in its brief at page 27: "Hundley told Adkins on August 20, 2009, that she had not spoken to or with any of Steve Phillips's family members."

It was true on August 20, 2009 and it is true today. Brooke Hundley had not spoken with Marni Phillips or her children. She did not lie or commit misconduct in answering the question the way she did. Adkins's accusation that Hundley committed misconduct in this way was false.

3. Adkins's claim that Hundley lied about having contact with Marni Phillips or Ryan Phillips is false.

Adkins also reported to Richardson that Hundley committed misconduct by not disclosing that she had contact with Marni and Ryan Phillips. This accusation is false. Adkins never asked Hundley this question. He is an experienced attorney and was conducting an interrogation style investigation and knew how to ask proper questions. He never asked this question so it is false to accuse Hundley of improperly failing to disclose it. She is simply not required to read his mind

and it is not misconduct to fail to do so. Hundley testified that she was never asked this question. Hundley, Ex. A, 305:23-306:3. This evidence will support a jury verdict that Adkins's accusation on this topic was false.

4. Adkins's claim that Hundley lied about not knowing who the woman was who called Marni Phillips is false.

Adkins also accused Hundley of lying when she claimed not to know the person whom she had hired to call Marni Phillips. Adkins testified that Hundley said "some women – she didn't know who – called Mrs. Phillips at her home to inform Mrs. Phillips that her husband was having an affair." Adkins, Ex. B, 35:3-15. ESPN admits that "Adkins told Richardson that "Plaintiff had stated that some woman who she did not know called Mrs. Phillips at her home to inform Mrs. Phillips that her husband was having an affair." Def.'s Answer, Count 4, ¶ 46.

This accusation simply makes no sense. If Hundley knew that a woman made this call, she would certainly have known the woman's identity. There is no reference to this exchange in Hricisko's notes, either hand written or typed. Ex. I, Y.

There is simply no evidence in the record that Hundley made this statement to Adkins. Hundley testified that when she was asked, she stated that she did not know who was making repeated harassing calls to the Phillips home.

Defendant offers no evidence that Hundley even made this statement. Def's Mem., pp. 14-15. Instead, Defendant asserts that "Hundley was not honest or forthright about Courtney Arp." *Id.* Nowhere in this section of Defendant's brief that Hundley actually said anything like "some woman, I don't know who, called Marni." Adkins did not tell Richardson that Hundley was "not honest or forthright about Courtney Arp." Instead, he made a specific factual allegation about a

sentence that Brooke Hundley spoke that did not occur. There is no proof of any such statement in Donna Hricisko's notes; and ESPN has not offered any evidence in its Memorandum.

ESPN's unsupported allegation cannot support a grant of summary judgment on this count of Hundley's complaint.

5. Adkins's accusation that Hundley had misused ESPN's computer systems to facilitate a communication with Ryan Phillips was false.

ESPN offers no evidence whatsoever to support this accusation by Adkins. On pages 30-31 of its brief, ESPN cites its only shred of evidence, namely, the unsworn statement from an email by Dan Robertson that vaguely states, "she's definitely used equipment here as it relates to the Phillips events." ESPN next acknowledges that their "may be some question as to the exact procedures or processes that Hundley used while at work or on ESPN's systems..." Of course, a question like that defeats summary judgment. In fact, Mr. Robertson's email even if it were admissible for the truth of the matter asserted,⁶ does not offer any evidence that Hundley specifically used ESPN's computer to contact Ryan Phillips.

At her deposition, Hundley denied using ESPN's computers to contact Ryan Phillips. She admitted attempting to contact him through Facebook through her home computer. Of course, this is not misconduct in violation of ESPN's policies.

Adkins knew that he had no support for his accusation when he made it to Richardson. As discussed above at pages 15-16, Dan Robertson, Vice President of IT, did a thorough search of Hundley's computer and found no evidence that she had used ESPN's computers to contact Ryan

⁶ ESPN may not offer this out of court statement to prove the truth of the matter asserted because it is hearsay. Conn. Practice Book § 17-46 requires that supporting affidavits "shall be made in personal knowledge, shall set forth such facts as would be admissible un evidence, and shall show affirmatively that the affiant is competent to testify to the matter stated therein." This email is not an affidavit, and even if it were, it does not contain any of the required indicia of reliability.

Phillips. In his final report to Adkins, Robertson wrote, "Sorry, no evidence of the 'he said she said' in black and white." Exhibit AA.

This evidence requires denial of Defendant's Motion for Summary Judgment on this count.

6. Adkins's accusation that Hundley used ESPN's computer systems to prepare the script that was used to call Marni Phillips is false.

Doug Adkins admitted under oath that he told Paul Richardson that Hundley "used ESPN's...computer systems[] to prepare the script, which apparently this woman that she hired on Craigslist used to call Mrs. Phillips." Adkins, Ex. B, 36:3-18. ESPN has denied this allegation in its Answer (Count 6, ¶ 46). In its brief, ESPN cites vague testimony by Hundley on this topic. Def.s' Mem. at 32. Specifically, it cites Hundley's testimony that the script "could be prepared on my ESPN computer." The entire exchange on this topic is found on pages 381 through 387 of Hundley's deposition. Near the end, when asked if she believes that she prepared it while at work, she answers, "No." Hundley, Ex. A, 386:20-24. At best, ESPN's evidence is not conclusive.

Further, ESPN has not cited a policy that would have been violated had Hundley prepared the script on an ESPN computer. In the absence of this evidence, it cannot support its published claim that Hundley committed "misconduct." This evidence- and lack thereof- requires denial of ESPN's Motion for Summary Judgment as to the Sixth Count of Hundley's complaint.

7. ESPN's allegation in its termination letter that Hundley committed "misconduct" was false.

In Plaintiff's Seventh Count, she alleges that the publication of the allegation of misconduct to her personnel file constitutes defamation. This allegation of misconduct is false for all of the reasons discussed in sections 1-6 above.

8. **Plaintiff's defamation in the press count well supported.**

Plaintiff's Eight Count alleges that ESPN defamed her publicly when it told the Associated Press that its "investigation found Hundley's characterization of the events [to be] inconsistent." This statement is a careful way of calling Hundley a liar. Of course, being accused of lying during an investigation constitutes defamation. Since the underlying reasons for the accusation were false and made maliciously, the statement to the AP also constitutes defamation.

ii. **ESPN's false accusations were made with malice, either actual malice or malice in fact.**

1. *Adkins reopened the investigation of Hundley because of the public relations "mess" that the Post article caused and not, as he claimed, because the article revealed new evidence that Hundley had made misrepresentations.*

The New York Post published its article about Phillips and Hundley on October 21, 2009 at 4:14 a.m. The article portrayed Hundley as a stalker and based its writing almost exclusively on the statements made by the Phillips family to the Wilton, Connecticut police department. Ex. R.

ESPN had closed its investigation into Hundley approximately 5 weeks earlier, i.e., on September 16, 2009. Ex. L, Adkins, Ex. B, 60:13-61:7. During those five weeks, Hundley committed no act of misconduct and was not investigated. There was nothing stopping ESPN from continuing its investigation of Hundley during this time. It interviewed Joya Caskey and determined that she had made a "misrepresentation" regarding her role in the investigation. It certainly could have re-interviewed Hundley.

Defendant did not re-open its investigation of Hundley until it was embarrassed by the media publicity arising out of the Post article. Certainly, this article was the driving force in the "re-investigation" of Brooke Hundley.

Adkins and ESPN had a “mess” on its hands, now that the details of the Phillips/Hundley incident had been made public. Its recently hired on air baseball analyst was now the subject of a sexual scandal involving infidelity and allegations of sexual harassment in the work place. What had before been a private matter was now a front page scandal. Certainly, ESPN would have to fire Phillips if it wanted to avoid the appearance of being an employer who tolerated sexual harassment in its workplace. It would also have to fire Hundley if it wanted to avoid the appearance of being an employer who tolerated stalkers. This motivation, i.e., to protect its public reputation, was an “improper or unjustifiable motive.” (See, e.g., *Gaudio*, seeking to avoid legal liability was sufficiently “improper or unjustifiable.”) ESPN simply may not create a false record in order to protect its own reputation.

Adkins certainly reopened his investigation of Hundley as a result of the Post article – but not, as he states, because that article revealed new evidence that Hundley had lied during her August 20, 2009 interview. That claim of Adkins was also a lie, done to cover up his true motive.

Defendant claims that Adkins learned new facts when he read the article and that these allegedly new facts caused him to believe that Hundley may have made misrepresentations to him and Hricisko in August 2009 when they interviewed her. Def.’s Mem. at 6-8. This claim is false. The Post article did not add any new facts to the investigation, and Adkins and Hricisko had already been told the facts that they claim were new, either by Hundley or by Phillips.

ESPN only refers to one allegedly new fact in its brief. It claims that the Adkins learned from the police reports that the police “found that Ryan Phillips had been contacted via Facebook using an IP address tracked back to ESPN’s offices. (Adkins TR.43:4-15).” Def’s Memo at 7. ESPN did not attach the actual report and instead cites simply to Adkins testimony. In fact, a

letter was sent by the Wilton Police Department to ESPN on September 18, 2009, informing ESPN that “your records were obtained by court order for this agency to conduct a criminal investigation.” Ex. EE. At any point, ESPN could have called the Wilton Police Department to find out what the referenced investigation was. In fact, the final sentence of this letter reads, “Should you have any questions regarding this order you may contact the investigator below.” *Id.* Therefore, this was not a newly discovered fact by ESPN as Adkins testified.

Adkins mentioned one additional new fact at his testimony. He testified that there was a “report of this woman coming forward and saying that she had been hired off craigslist.” Adkins, Ex. B, 40:9-14. The problem with this claim is that the Post article on this topic was not published until the next day, i.e., October 22, 2009 at 2:28 a.m. It is likely that Adkins did not read it (if he did) until many hours later. By then, Adkins had already written his email to Hricisko asking her to print out the links from the article the day before. Ex. FF. It was the first article, which first ran on October 21, 2009 at 4:14 a.m., which Adkins claimed to have reviewed. Adkins, Ex. B, 38:5 – 39:5. It was this article that ESPN attached as its Exhibit A to its Answer to Hundley’s CHRO complaint. Ex. X. Adkins had already reopened his investigation before he even knew about Courtney Arp. This fact could not have been a reason that he reopened his investigation as he claims.

In sum, Adkins lied when he said that the Post article of October 21, 2009 brought forth two new facts which led him to reopen his investigation. The issue of ESPN’s computers being used to contact Ryan Phillips was told to ESPN on September 18, 2009, and the Courtney Arp issue wasn’t brought to his attention, if at all, until after he had reopened his investigation.

From these facts, a jury can and likely will conclude that ESPN had an improper or unjustifiable motive to false accuse Brooke Hundley. It can conclude that ESPN's motivation was to protect its image and avoid bad publicity. It can conclude that Adkins lied when he claimed that he genuinely and legitimately learned new things. These lies, coupled with the fact that Robertson "hoped" to find evidence to justify Hundley's termination, provide ample evidence to create a genuine issue of material fact as to whether ESPN acted with malice in defaming Hundley. A jury can also conclude that Adkins lied from the evidence that he has lied under oath in the course of this proceeding. *See supra*, p. 18, n. 3. This evidence of Adkins's perjury will be presented to a jury and will support their claim.

2. ***Adkins's accusations regarding Hundley were made recklessly and he had or should have had "serious doubts" about their veracity.***

As in *Gaudio* and *Gamberdella*, Adkins's accusations that Hundley had committed misconduct were made recklessly. He had or should have had "serious doubts" about the veracity of his accusations. There is ample evidence from which a jury could conclude that ESPN "did not reasonably believe that" Hundley had committed misconduct. *Gaudio* at 542-43; *Gamberdella* at 639.

First, a jury can conclude from the evidence discussed above at pages 20-24 *supra*- namely, the lack of evidence in support of Adkins's accusations and/or the evidence that these accusations were false- that the accusations were made in conscious disregard for the truth. For example, it is reckless to accuse Hundley of making a misrepresentation regarding whether or not she spoke with Marni Phillips when Hricisko's handwritten and typed notes clearly indicate that she was asked if she had spoken with Marni and that she truthfully answered that she had not. The

sheer lack of support for Adkins's accusations can reasonably form the basis for a jury's finding that he should have had "serious doubts" as to their veracity.

There are other indicia of recklessness. As in *Gaudio*, Hundley "was not permitted to respond to the serious accusations leveled against [her]." *Gaudio, supra*, 249 Conn. at 543. Upper management, *i.e.* Paul Richardson, conducted "no investigation, apart from considering [Adkins's] report." *Id.* ESPN's Vice President of IT stated, "Sorry- no evidence of the he said/she said in black and white." Ex. Z. The same report shows that a "chat" received by Ryan Phillips on August 17, 2009 at 5:30 AM "does not coincide with her access logs of that day," ex. Z, and that she hadn't logged into the ESPN network until 5:46 AM that day. Finally, Defendant had been in possession of a letter from the Wilton Police Department informing it that it had secured telephone and/or internet records to pursue a criminal investigation. Ex. EE. Defendant was thus on notice that the Wilton Police were investigating a crime involving their technology. There is no reason to believe that Adkins was suddenly made aware of the existence of wrongdoing after the New York Post reported the story.

iii. Plaintiff was not a public figure.

Defendant argues in its Memorandum (pp. 19-22) that Hundley is a "limited purpose public figure." This assertion is false, as defendant cannot make the requisite showing that she (1) successfully invited public attention to his views in an effort to influence others prior to the incident that is the subject of litigation; (2) voluntarily injected himself into a public controversy related to the subject of the litigation; (3) assumed a position of prominence in the public controversy; and (4) maintained regular and continuing access to the media. *Lerman v. Flynt*

Distributing Co., Inc., 745 F.2d 123, 136-37 (2d Cir. 1984). Defendant cannot make this showing because Hundley did not act in any manner to make herself a public figure.

Prior to the publication of the article in the New York Post, Hundley never took any action whatsoever that could be construed as inviting public attention to herself or her views. She was the object of the affections of a public figure. Defendant has provided no evidence that Hundley invited public attention to her views in an attempt to influence anyone prior to her termination from ESPN.

In *Wolston v. Reader's Digest Ass'n, Inc.*, 443 U.S. 157, 166-67 (1979), the Court held that the plaintiff was "dragged unwillingly into the controversy" because he did not "discuss the matter with the press and limited his involvement to that necessary to defend himself against" a charge brought against him in a high-profile matter. Defendant's only evidence that she invited this public attention took place after the New York Post article appeared and Hundley was terminated: before that it cites events that Ms. Hundley to which Hundley was subjected. Defendant states that Hundley "repeatedly **had** paparazzi harassing her;" that she "**received**" emails and phone calls; and that she was the **subject** of a joke on The Tonight Show. (Def.'s Mem. at p. 20.) As defendant's own characterization makes clear, Hundley was the passive subject of this attention. "A private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention." *Wolston, supra*, 443 U.S. at 167.

After her termination, Plaintiff appeared on a few television shows in order to defend herself against the outrageous statements being made about her in the press. This activity does not

make her a “limited purpose public figure.” Rather, she “limited [her] involvement to that necessary to defend [her]self against” Defendant’s characterization of her as an untruthful person.

Defendant cites *Lerman, supra*, 745 F.2d at 137-38, to support its claim that Hundley should be considered a limited purpose public figure. Ms. Lerman was the author of several controversial sexually explicit books that had been published in 32 languages. *Id.* at 137. The Second Circuit held that Ms. Lerman was a limited purpose public figure:

By voluntarily devoting herself to the public’s interest in sexual mores, through extensive writing on this topic, reaping profits and wide notoriety for herself in the process, Ms. Lerman must be deemed to have purposefully surrendered part of what would otherwise have been her protectable privacy rights, at least those related in some way to her involvement in writing her books and screenplays. *Id.*

Finally, Defendant cites *James v. Gannett Co.*, 40 N.Y.2d 415 (N.Y. 1976) to support its contention that Hundley was a limited purpose public figure.⁷ In that case, the plaintiff was a belly dancer who performed in public regularly and sat for a newspaper interview regarding her artistic endeavors. *Id.* at 418. Plaintiff complained that the subsequent interview mischaracterized her as a prostitute. *Id.* at 419.

Hundley was in the public arena due solely to the fact that she was connected to a public figure and not by any action of her own. For this reason, she should not be considered a “limited purpose public figure” held to a higher standard for the purposes of making a claim of defamation.

⁷ Defendant also cites two New York state cases that are not persuasive to support its position. *Daniel Goldreyer, Ltd. v. Dow Jones & Co.*, 259 A.2d 353 (N.Y. App. Div. 1999) contains no discussion of this issue except to state that “Plaintiff is an art restorer, controversial and well-known in the profession, but not outside of it.” In *Kelly v. State of New York*, 131 A.D.2d 176 (N.Y. App. Div. 1987), the court also did not discuss the issue at length, but stated that “Claimant was not reluctant to submit to interviews or to testify on the subject, nor did he resist the publicity that followed.” In this case, as has been discussed, Plaintiff attempted to avoid the press prior to her termination.

C. Plaintiff's retaliation count is well supported.

Defendant claims that Plaintiff cannot show that her complaint of sexual harassment caused her termination. Def.'s Mem. at 9-18. Defendant claims that the two months in between Hundley's August complaint and her October termination is too long and that a jury could not infer a causal connection as a matter of law. *Id.* Defendant's reasoning is flawed, first because two months is not too long to infer a causal connection; and second, because Hundley does not rely solely on temporal proximity to show causation. A causal connection between a protected complaint and a termination may be shown by temporal proximity. *Id.* at 255. In the Second Circuit, three months is sufficient to establish this causal connection. *Pavone v. Puglisi*, 353 Fed. Appx. 622, 625 (2d Cir. 2009). Further, "[a] court may overlook a longer gap in time between protected conduct and an adverse employment action where the pattern of retaliatory conduct begins soon after the filing of the complaint and only culminates later in actual discharge." *Mody v. Gen. Electric Co.*, 2006 WL 413439 at *10 (D. Conn. Feb. 21, 2006) (internal quotation omitted). This element of a plaintiff's prima facie case may also be satisfied by alleging facts tending to show that the termination was a result of the complaint.

[P]roof of causation can be shown either: (1) indirectly, by showing that the protected activity was followed closely by discriminatory treatment, or through other circumstantial evidence such as disparate treatment of fellow employees who engaged in similar conduct; or (2) directly, through evidence of retaliatory animus directed against the plaintiff by the defendant.

Ayantola v. Board of Trustees of Technical Colleges, 116 Conn. App. 531, 539 (2009).

See also Bolick v. Alea Group Holdings, Ltd., 278 F. Supp. 2d 278, 283-84 (D. Conn. 2003) ("Retaliatory animus... can also be used to show the causal connection"); *Regional Economic*

Community Action Program, Inc., v. City of Middletown, 294 F.3d 35, 54 (2d Cir. 2002) (inferring a causal relationship despite adverse action not following immediately after protected activity where a reasonable juror could conclude the connection).

Plaintiff has submitted sufficient evidence to support her claim for retaliation in violation of the Connecticut Fair Employment Practices Act. She engaged in legally protected activity when she complained to Donna Hricisko on August 21, 2009 that Steve Phillips forced himself on her sexually. Subsequently, she suffered an adverse employment action, i.e., she was terminated on October 26, 2009. This termination occurred under circumstances which give rise to an inference of discrimination. These circumstances include that the person falsely accusing her was the person who investigated her claim. His investigation of her claim was limited to asking Phillips if he molested her and him denying it. He conducted no further investigation, even though Plaintiff supplied him with the names of witnesses whom he could have interviewed. Other people who committed conduct similar to that of which Plaintiff was accused – making misrepresentations during an investigation – were not fired. These people include Caskey and Adkins (*see* sections II.i and IV.8.(ii)(2) above). All of these facts give rise to an inference of discrimination. The fact that Adkins lied under oath to the Connecticut Commission on Human Rights and Opportunities was brought to the attention of Paul Richardson (Richardson, Ex. 54:6-69) and Adkins is still employed by ESPN. On September 18, 2012, Adkins signed an affidavit indicating that he is currently employed as Defendant's Vice President of Human Resources.

Additionally, Joya Caskey herself provides evidence that ESPN retaliates against women who make claims of sexual harassment. When she heard Hundley and Elser talking about Phillips harassment of her at Elser's going away party, she warned them to keep quiet. According to

Hundley Caskey warned that “You know, you really shouldn’t be talking about that here. You know these kind of situations tend to look bad for the women involved, and you’re both pretty young women, and I’ve talked to Erin about stuff like this too. And, you know, you really just kind of have to handle it on your own.” Hundley, Ex. A, 207:16-208:13.

Finally, Defendant’s proffered reasons for Plaintiff’s termination are false. As discussed above, the evidence supports a claim that Adkins the perjurer falsely accused Hundley of misconduct. Of course, it is now black letter law that a jury may conclude from the falseness of an employer’s stated reason for an employee’s discharge that the real reason was discrimination. *Reeves v. Sanderson Plumbing Products, Inc.* 530 U.S. 133 (2000).

V. Conclusion

ESPN’s termination of Brooke Hundley was based on the intentional or reckless falsehoods told by Doug Adkins to Paul Richardson. Adkins’s false accusations were made to “effectuate the plaintiff’s discharge” and for an “improper or unjustified” reason, i.e., to protect the reputation of ESPN. His statements were recklessly made since they were based on flimsy information and were done in the face of his IT department’s warning that there was “nothing eyebrow raising...”

Adkins reopened his investigation because of the Post article and the “mess” it created for ESPN. His goal was to protect the reputation of ESPN from the bad publicity that was building around Phillips’ treatment of Hundley. Adkins and his IT department were “hopeful” that they’d be able to “connect the dots” and find information that would “substantiate” ESPN’s decision to terminate Hundley.

His claim that he reopened the investigation of Hundley because he learned new things from the Post article is simply not true. There was no new information regarding whether or not Hundley used ESPN computers to contact Ryan Phillips. ESPN had been on notice of this issue at least as far back as September 18, 2009 when the Wilton police department sent a letter advising them of that issue.

Further, ESPN never did "connect the dots." Its IT department failed to show that she had in fact misused their computers. ESPN's own notes showed that she did not lie or misrepresent the truth during her August 20, 2009 interrogation.

Nonetheless, Adkins made these false and baseless accusations to Paul Richardson on Sunday, October 25, 2009. Based entirely on Adkins's report, Richardson approved Hundley's termination. Adkins's same false accusations were the basis for the termination letter that was put in her personnel file by Donna Hricisko and were the basis for ESPN's statement to the AP that their "investigation found Hundley's characterization of the events [to be] inconsistent."

This same evidence, the falseness and recklessness of Adkins's accusations of Hundley support her claim for retaliation. She had clearly engaged in a protected activity on August 21, 2009 when she sent Hricisko her written complaint that she had been sexually molested by Steve Phillips. Her termination 2 months later provides a jury with a reasonable basis to infer that it was retaliatory, especially since she had never been punished in her entire career and had done nothing wrong since the close of Adkins' original investigation on September 16, 2009. A jury will likely conclude that Adkins (the perjurer) lied to Richardson about Hundley. These facts are sufficient to send this claim to a jury. For these reasons, Defendant's motion for summary judgment should be denied on all counts.